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8 **MICHAEL KELLEY**

9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

12 **MICHAEL KELLEY,**

13 Plaintiff,

14 V.

15 **UNITEDSTARS INTERNATIONAL**
16 **LTD. d/b/a USI TRIP,**

17 Defendant.

Civil Action No. 2:23-cv-6510

18 **COMPLAINT**

19
20
21 Plaintiff Michael Kelley (“Plaintiff”) sues defendant UnitedStars
22 International Ltd. d/b/a USI Trip (“Defendant”), and alleges as follows:

23 **THE PARTIES**

1 1. Plaintiff is an individual who is a citizen of the State of California
2 residing in the State of California.

3 2. Defendant is a corporation organized and existing under the laws of
4 the State of Louisiana with its principal place of business located at 3507 Brighton
5 Place, Rowland Heights, CA 91748. Defendant's agent for service of process is
6 Gang Yu, 3507 Brighton Place, Rowland Heights, CA 91748.

7
8 **JURISDICTION AND VENUE**

9 3. This Court has subject matter jurisdiction over this action pursuant to
10 28 U.S.C. §§ 1331 and 1338(a).

11
12 4. This Court has personal jurisdiction over Defendant because it
13 maintained sufficient minimum contacts with California such that the exercise of
14 personal jurisdiction over it would not offend traditional notions of fair play and
15 substantial justice.

16 5. Venue properly lies in this district pursuant to 28 U.S.C. § 1400(a)
17 because Defendant or its agents reside or may be found in this district. "The Ninth
18 Circuit has interpreted Section 1400(a) to mean that venue is proper in any judicial
19 district in which the defendant would be amenable to personal
20 jurisdiction." Righthaven LLC v. Inform Techs., Inc., No. 2:11-CV-00053-KJD-
21 LRL, 2011 U.S. Dist. LEXIS 119379, at *8 (D. Nev. Oct. 14, 2011) (citing Brayton
22 Purcell LLP v. Recordon & Recordon, 606 F.3d 1124, 1128 (9th Cir. 2010)).
23
24

Venue is thus proper in this District because personal jurisdiction exists over Defendant in this District.

FACTS

I. Plaintiff's Business

6. Plaintiff is an accomplished professional photographer who specializes in architectural photography.

7. In 2018, Plaintiff founded the Architectural Photography Almanac (<https://apalmanac.com/>), a resource for architecture photographers and those in the architecture industry seeking to learn about the craft and theory of architecture photography.

8. Plaintiff's clients include Tesla Motors, FedEx, Discovery Networks, HGTV, Herman Miller, MAD Architects, and many others.

9. Plaintiff's work is highly sought after and has been exhibited in numerous art galleries/museums around the world.

II. The Work at Issue in this Lawsuit

10. In 2016, Plaintiff created a professional photograph which was photoshopped to give the appearance of multiple aircraft taking off simultaneously from a runway at Los Angeles International Airport titled "Los_Angeles_International_25L_and_25R_(Wake_Turbulence)" (the "Work").

A copy of the Work is exhibited below:



11. The Work was registered by Plaintiff with the Register of Copyrights on December 6, 2016 and was assigned Registration No. VA 2-024-076. A true and correct copy of the Certification of Registration pertaining to the Work is attached hereto as **Exhibit “A.”**

12. Plaintiff is the owner of the Work and has remained the owner at all times material hereto.

III. Defendant’s Unlawful Activities

13. Defendant is an online travel booking platform offering tour packages, flight ticket reservations, study abroad, and college study tours for destinations all over the world. Its services are geared towards Chinese citizens.

14. Defendant advertises/markets its business primarily through its website (<http://www.usitrip.com/>) and social media (e.g. <https://www.facebook.com/usitripofficial/>).

1 15. On July 28, 2017 (after Plaintiff's above-referenced copyright
2 registration of the Work), Defendant published the Work on its website (at
3 <https://m.usitrip.com/news/r4094.html>) in connection with an article titled
4 "Aviation information":
5



16 16. A true and correct copy of screenshots of Defendant's website,
17 displaying the copyrighted Work, is attached hereto as **Exhibit "B."**
18

19 17. Defendant is not and has never been licensed to use or display the
20 Work. Defendant never contacted Plaintiff to seek permission to use the Work in
21 connection with its business or for any other purpose.
22

23 18. Defendant utilized the Work for commercial use.

24 19. Upon information and belief, Defendant located a copy of the Work

1 on the internet and, rather than contact Plaintiff to secure a license, simply copied
2 the Work for its own commercial use.

3 20. Through his ongoing diligent efforts to identify unauthorized use of
4 his photographs, Plaintiff discovered Defendant's unauthorized use/display of the
5 Work in November 2020. Following Plaintiff's discovery, Plaintiff notified
6 Defendant in writing of such unauthorized use. To date, Plaintiff has been unable
7 to negotiate a reasonable license for the past/existing infringement of his Work.
8

9 21. All conditions precedent to this action have been performed or have
10 been waived.
11

12 **COUNT I – COPYRIGHT INFRINGEMENT**

13 22. Plaintiff re-alleges and incorporates paragraphs 1 through 21 as set
14 forth above.

15 23. The Work is an original work of authorship, embodying copyrightable
16 subject matter, that is subject to the full protection of the United States copyright
17 laws (17 U.S.C. § 101 *et seq.*).
18

19 24. Plaintiff owns a valid copyright in the Work, having registered the
20 Work with the Register of Copyrights and owning sufficient rights, title, and
21 interest to such copyright to afford Plaintiff standing to bring this lawsuit and assert
22 the claim(s) herein.
23

24 25. As a result of Plaintiff's reproduction, distribution, and public display

1 of the Work, Defendant had access to the Work prior to its own reproduction,
2 distribution, and public display of the Work on its website, webpage, and/or social
3 media.

4
5 26. Defendant reproduced, distributed, and publicly displayed the Work
6 without authorization from Plaintiff.

7 27. By its actions, Defendant infringed and violated Plaintiff's exclusive
8 rights in violation of the Copyright Act, 17 U.S.C. § 501, by reproducing,
9 distributing, and publicly displaying the Work for its own commercial purposes.

10
11 28. Defendant's infringement was willful as it acted with actual
12 knowledge or reckless disregard for whether its conduct infringed upon Plaintiff's
13 copyright. Notably, Defendant itself utilizes a copyright disclaimer on its website
14 ("Copyright © 2008-2023 usitrip.com"), indicating that Defendant understands the
15 importance of copyright protection and intellectual property rights and is actually
16 representing that it owns each of the photographs published on its website. See,
17 e.g., Bell v. ROI Prop. Grp. Mgmt., LLC, No. 1:18-cv-00043-TWP-DLP, 2018
18 U.S. Dist. LEXIS 127717, at *3 (S.D. Ind. July 31, 2018) ("[T]he willfulness of
19 ROI's infringement is evidenced by the fact that at the bottom of the webpage on
20 which the Indianapolis photograph was unlawfully published appeared the
21 following: 'Copyright © 2017.' By placing a copyright mark at the bottom of its
22 webpage that contained Mr. Bell's copyrighted Indianapolis Photograph, Mr. Bell
23
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1 asserts ROI willfully infringed his copyright by claiming that it owned
2 the copyright to everything on the webpage.”); John Perez Graphics & Design,
3 LLC v. Green Tree Inv. Grp., Inc., Civil Action No. 3:12-cv-4194-M, 2013 U.S.
4 Dist. LEXIS 61928, at *12-13 (N.D. Tex. May 1, 2013) (“Once on Defendant’s
5 website, Defendant asserted ownership of Plaintiff’s Registered Work by including
6 a copyright notice at the bottom of the page. Based on these allegations, the Court
7 finds Plaintiff has sufficiently pled a willful violation....”). Defendant clearly
8 understands that professional photography such as the Work is generally paid for
9 and cannot simply be copied from the internet.

10
11
12 29. Plaintiff has been damaged as a direct and proximate result of
13 Defendant’s infringement.

14 30. Plaintiff is entitled to recover his actual damages resulting from
15 Defendant’s unauthorized use of the Work and, at Plaintiff’s election (pursuant to
16 17 U.S.C. § 504(b)), Plaintiff is entitled to recover damages based on a
17 disgorgement of Defendant’s profits from infringement of the Work, which
18 amounts shall be proven at trial.

19
20 31. Alternatively, and at Plaintiff’s election, Plaintiff is entitled to
21 statutory damages pursuant to 17 U.S.C. § 504(c), in such amount as deemed
22 proper by the Court.

23 32. Pursuant to 17 U.S.C. § 505, Plaintiff is further entitled to recover his
24

1 costs and attorneys' fees as a result of Defendant's conduct.

2 33. Defendant's conduct has caused, and any continued infringing
3 conduct will continue to cause, irreparable injury to Plaintiff unless enjoined by
4 the Court. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502,
5 Plaintiff is entitled to a permanent injunction prohibiting infringement of Plaintiff's
6 exclusive rights under copyright law.
7

8 **WHEREFORE**, Plaintiff demands judgment against Defendant as follows:

- 9 a. A declaration that Defendant has infringed Plaintiff's copyrights in the
10 Work;
11
12 b. A declaration that such infringement is willful;
13
14 c. An award of actual damages and disgorgement of profits as the Court deems
15 proper or, at Plaintiff's election, an award of statutory damages for willful
16 infringement up to \$150,000.00 for each infringement of the Work;
17
18 d. Awarding Plaintiff his costs and reasonable attorneys' fees pursuant to 17
19 U.S.C. § 505;
20
21 e. Awarding Plaintiff interest, including prejudgment interest, on the foregoing
22 amounts;
23
24 f. Permanently enjoining Defendant, its employees, agents, officers, directors,
attorneys, successors, affiliates, subsidiaries and assigns, and all those in
active concert and participation with Defendant, from directly or indirectly

infringing Plaintiff's copyrights or continuing to display, transfer, advertise, reproduce, or otherwise market any works derived or copied from the Work or to participate or assist in any such activity; and

g. For such other relief as the Court deems just and proper.

Demand For Jury Trial

Plaintiff demands a trial by jury on all issues so triable.

DATED: August 10, 2023

ALVES RADCLIFFE LLP

By: /s/ Scott E. Radcliffe

SCOTT E. RADCLIFFE
Attorney for Plaintiff
Michael Kelley